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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

29484.30

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on April 18, 2006

Signature Linda Ingram

Typed or printed name Linda Ingram

Application Number

10/005,396

Filed

December 4, 2001

First Named Inventor

Mark E. Epstein et al.

Art Unit

2151

Examiner

Glenford J. Madamba

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

applicant/inventor.

assignee of record of the entire interest.

See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

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April 18, 2006

Registration number if acting under 37 CFR 1.34 _____

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
Submit multiple forms if more than one signature is required, see below*.



*Total of 1 forms are submitted.

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REASONS

In the final rejection mailed on November 18, 2005, independent Claims 40, 73 and 85 were each rejected under 35 U.S.C. §102 as completely anticipated by Frailong U.S. Patent No. 6,496,858. It is respectfully submitted that this §102 rejection is clearly not proper and is without basis. More specifically, as discussed below, the §102 rejection has a clear legal deficiency, because it lacks an essential element needed to establish a prima facie rejection. In this regard, in order to properly establish a prima facie case of anticipation under §102, an examiner must show that a prior art reference discloses each and every element recited in the claim, arranged as recited in the claim (MPEP §2131). In other words, the reference must disclose exactly what is recited in the rejected claim. The Frailong patent fails to do so.

More specifically, persons skilled in the art are well aware that a typical network or ISP environment has a plurality of network devices, including a plurality of gateway interface devices. The Frailong patent relates to this type of known network. For example, Figure 2 of Frailong shows the Internet at the top of the figure, and at 208 shows one of the many gateway interface devices that are in fact coupled to the Internet. As discussed in lines 34-36 of column 7, Figure 4 is a diagram representing software 400 that is executed within each gateway interface device 208, and this software 400 includes a runtime layer 406. This runtime layer 406 is also shown in Figure 5, and Figure 5 very clearly shows that the runtime layer 406 includes a configuration manager 506 and a data store 508. Figure 5 also shows a remote server 504 and, in the text beginning in line 6 of column 10, Frailong explains that the remote server 504 performs centralized collection of various attributes/parameters, such as information about the deployment environment. In Frailong, the process of collection of attributes/parameters by the remote server 504 is described in detail in lines 24-40 of column 5. In addition, Figures 9A and 9B of Frailong depict the process where customer information is collected and stored in the remote server 504. Eventually, at least some of this information is transmitted to at least one of the interface devices, such as the configuration manager 506 in the gateway interface device 208.

In Frailong, once the remote server 504 has collected attributes and then transmitted at least some of this collected information to the configuration manager 506 in the gateway interface device 208, the remote server 504 has no further interaction with the gateway device 208 (except where a source other than the device 208 provides the remote server 504 with a request for an upgrade or service change for the device 208). This is because all configuration management functions are the responsibility of the configuration manager 506 in the runtime layer 406 of the gateway interface device 208 (as opposed to being the responsibility of the remote server 504). The configuration manager 506 does not send

configuration information back to the remote server 504. This is very clear from Figures 3-5 of Frailong, and from the text running from line 65 of column 5 through line 8 of column 12. With reference to the text that begins in line 34 of column 7, Frailong describes the role of the software executed in the runtime layer 406 of the gateway interface device 208, and provides examples that very clearly show the configuration manager 506 is part of the gateway interface device 406, and not part of the remote server 504. Frailong is quite clear and specific in explaining that the system software relating to configuration management is executed in the gateway interface device (for example in the text beginning in line 45 of column 7). Frailong is equally clear and specific that the configuration manager 506 is part of the runtime layer 406 disclosed in Figures 4 and 5. Moreover, Frailong explains very clearly that the data store 508 exists logically in the runtime layer 406 of the gateway interface device 208, and exists physically in the hardware of the gateway interface device 208. For example, see Figure 3 and lines 50-55 in column 10.

It should be noted that, in Figure 5 of Frailong, the line from the remote server 504 to the configuration manager 506 has an arrowhead at only one end, in order to represent the unidirectional flow of attributes from the remote server 504 to the configuration manager 506 within the gateway interface device 208. Similarly, Figures 9A and 9B clearly teach a unidirectional flow of collected attributes from the remote server 504 to the configuration manager 506 of the gateway interface device 208. With reference to Figures 6-7, and the text running from line 1 of column 9 to line 2 of column 10, Frailong discusses some configuration change operations that occur within the gateway interface device 208 and that are accomplished without any notification to or involvement of the remote server 504. All configuration management and rollback functions are localized to the system software of the gateway interface device 208. This clearly demonstrates that the gateway interface device 208 maintains its own configuration, namely in the data store 508 of its own configuration manager 506. Thus, the Frailong patent clearly teaches that each of the many gateway interface devices 208 handles its own configuration management. There may be centralized collection of certain attributes in Frailong, but the actual configuration management is carried out separately in each of the gateway devices 208. Configuration management is thus distributed rather than centralized.

In the present Office Action, the rejection of Applicants' Claim 40 appears in lines 1-8 on page 10. In particular, the Office Action notes that Frailong discloses a server 206 (Figure 2), and then asserts that the server 206 includes a data store 508, a user interface 502, and a scheduler 404 (Figure 4). However, this is not correct. Figure 2 of Frailong depicts the remote server 206, and also a gateway interface device 208. As evident from the foregoing discussion of Frailong, and contrary to the assertions in the Office Action, the data store 508 and the scheduler 404 are not portions of the server 206, but

instead are portions of the gateway interface device 208. Frailong's approach to network device management is de-centralized, in that each device (such as the gateway interface device 208) handles its own configuration management. As discussed above, some attributes are collected centrally and are then supplied to network devices. But the actual configuration management in Frailong is then performed in the network devices themselves, and not centrally. Frailong simply does not do centralized configuration management. In contrast, the centralized configuration approach of the present application will work with virtually any commercially available device, and in fact can work with pre-existing devices without any need for changes to the hardware of those devices. With respect to the specific language of Claim 40, Frailong clearly fails to disclose a "control server to manage a plurality of device configurations", much less such a control server that has "a data store to store current status of each device". Frailong therefore fails to teach each and every element recited in Claim 40, and thus does not anticipate Claim 40 under §102.

In lines 15-17 on page 3 of the final rejection, the Examiner states that Claim 40 is "interpreted" to read as follows:

APPLICANTS' ACTUAL CLAIM 40	EXAMINER'S STATED "INTERPRETATION"
<p>A control server to manage a plurality of device configurations comprising:</p> <p>a data store to store current status of each device;</p> <p>a user interface to alter data in the data store to prompt creation of a job;</p> <p>a scheduler to schedule jobs to update devices;</p> <p>a control point interface to send jobs to a control point, and to receive a result from the control point.</p>	<p>A control server computer system and method of managing a plurality of device configurations, comprising</p> <p>a data store,</p> <p>a user interface,</p> <p>a job scheduler, and</p> <p>a control point.</p>

Applicants respectfully submit that this is not merely an "interpretation" of Claim 40. Instead, what the Examiner has done is to discard Applicants' Claim 40, replace it with a significantly different claim, and then base examination on the replacement claim. For example, Applicants' Claim 40 includes limitations

that distinguish Claim 40 from the prior art, such as a recitation that the data store operates "to store current status of each device". But this distinctive limitation does not appear anywhere in the Examiner's substitute claim. Applicants respectfully submit that this approach is highly improper. In effect, the Examiner's rejection asserts that every word of the substitute claim is anticipated by Frailong. But that is not the issue. The issue is whether every word of Applicants' Claim 40 is anticipated by Frailong. As discussed above, this is not the case. For example, Applicants' Claim 40 recites a plurality of device configurations, and then recites "a data store to store current status of each device". Frailong discloses in Figure 5 a data store 508 that stores a configuration for one device (the gateway interface device 208), but Frailong's data store 508 does not store configuration information for each of a plurality of devices. Moreover, Figure 5 of Frailong discloses a configuration manager 506 that manages the configuration for only one device (the gateway interface device 208). Frailong's configuration manager 506 does not "manage a plurality of device configurations" as recited in Applicants' Claim 40. Thus, since Frailong does not disclose each and every element recited in Applicants' Claim 40, Frailong does not anticipate Claim 40 under §102.

Independent Claims 73 and 85

Where a §102 rejection is based on a complex reference, 37 C.F.R. §1.104(c)(2) requires that an Office Action clearly identify the particular portions of the reference that supposedly correspond to the subject matter of the claim. The rejections of Claim 73 and Claim 85 each fail to meet this requirement. For example, the rejection of Claim 73 fails to clearly identify which components of Frailong are believed by the Examiner to correspond to the "control server" and the "control point" that are recited in Claim 73. Similarly, the rejection of Claim 85 fails to clearly identify which components of Frailong are believed by the Examiner to correspond to the "control server", the "control point" and the "device" recited in Claim 85. This makes it difficult or impossible for Applicants to understand the basis for the rejection, and constitutes a clear legal deficiency in the rejection.

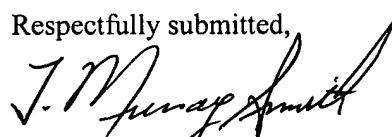
Moreover, in light of the foregoing discussion of Frailong, it will be evident that Frailong does not disclose each and every element that is recited in Claim 73 or in Claim 85. For example, and contrary to the assertions in the Office Action, Frailong's data store 508 does not contain "configurations of each device coupled to the control server through a control point", as recited in Applicants' Claim 73. The rejection of Claim 85 suffers from a similar defect, in that it treats elements in Frailong such as the data store 508 as if they were components of the server 206, when in fact they are actually components of the

gateway interface device 208. Thus, since Frailong does not disclose each and every element recited in either of Applicants' Claims 73 and 85, Frailong does not anticipate these claims under §102.

Conclusion

Accordingly, since the Frailong reference fails to disclose at least one of the elements recited in each of Applicants' independent Claims 40, 73 and 85, it is respectfully submitted that the §102 rejection of these claims lacks an essential element needed to establish a prima facie rejection, and therefore has a clear legal deficiency. Consequently, the rejection is clearly not proper and is without basis, and it is therefore respectfully requested that it be withdrawn. And since these independent claims are not anticipated by Frailong, their dependent claims are not anticipated either.

Respectfully submitted,



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